



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2009-0436; FRL-9978-30-Region 1]**

**Air Plan Approval; Rhode Island; Enhanced Motor Vehicle Inspection  
and Maintenance Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. These revisions include regulations to update the enhanced motor vehicle inspection and maintenance (I/M) program in Rhode Island. The revised program includes a test and repair network consisting of on-board diagnostic (OBD2) testing for model year 1996 and newer vehicles and tailpipe exhaust test, using a dynamometer, for model year 1995 and older vehicles. The intended effect of this action is to approve the revised program into the Rhode Island SIP. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2009-0436. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at [www.regulations.gov](http://www.regulations.gov) or at the

U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number: (617) 918-1660, email: *garcia.ariel@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. Background and Purpose**

On November 14, 2017, EPA published a direct final rule (82 FR 52682), as well as an accompanying notice of proposed rulemaking (NPRM) (82 FR 52682), for the State of Rhode Island. The direct final rule intended to approve a SIP revision submitted by the State of Rhode Island updating Rhode Island's enhanced motor vehicle inspection and maintenance program.

Due to the receipt of an adverse comment, EPA published a withdrawal of the direct final rule in the **Federal Register** on January 9, 2018 (83 FR 984).

EPA published a second NPRM on March 2, 2018 (83 FR 8961), which reopened the public comment period, and proposed approval of Rhode Island's SIP revision updating the State's enhanced motor vehicle I/M program. The formal SIP revision was submitted in two parts: (1) a submittal made by Rhode Island on January 28, 2009, which included regulations to update the enhanced I/M program in Rhode Island, and (2) a supplemental submittal made by Rhode Island on February 17, 2017, which included the emissions modeling and I/M SIP narrative required by EPA's I/M regulations. A detailed discussion of Rhode Island's SIP revision and EPA's rationale for proposing approval of the SIP revision were provided in the November 14, 2017 NPRM (82 FR 52682) and will not be restated in this document. EPA is approving Rhode Island's enhanced I/M program SIP revision because it is consistent with the Clean Air Act's I/M requirements and EPA's I/M regulations.

## **II. Response to Comments**

The adverse comment received on EPA's November 14, 2017 direct final rule (82 FR 52682) requested that EPA hold a new public comment period, because EPA did not make all relevant documents available in the docket at [www.regulations.gov](http://www.regulations.gov).

Prior to the reopening of the public comment period, via the NPRM that published in the **Federal Register** on March 2, 2018 (83 FR 8961), EPA made available all documents, which are compatible with the electronic docket system, at the docket identified by Docket ID No. EPA-R01-OAR-2009-0436 at [www.regulations.gov](http://www.regulations.gov). Also, EPA explained that all other documents, including emissions modeling files submitted as part of Rhode Island's enhanced motor vehicles I/M program SIP revision, were available for public review by visiting the EPA New England Regional Office or by contacting the contact listed in the **FOR FURTHER INFORMATION**

**CONTACT** section. The reopening of the public comment period also served as the notice of data availability referenced in the January 9, 2018 withdrawal of direct final rule (83 FR 984).

We received comments during the public comment period reopened by the March 2, 2018 (83 FR 8961) NPRM. However, all but one of those comments were not germane to our proposed approval of Rhode Island's enhanced motor vehicle I/M program SIP revision.

Comment: A single anonymous comment, much of which included information that was not germane to EPA's proposed approval of Rhode Island's enhanced motor vehicle I/M program SIP revision, also stated that "[t]he Rule created potentially unduly burdensome requirements, Agency [sic] has failed to show a need for Regulations [sic] Given the extremely limited pollutant loadings and relative high costs, according to EPA's own analysis, the requirements appear to be ripe for substantial reduction or elimination. this [sic] entire subcategory would be excluded by rule given the de minimis amount of pollution."

Response: If "The Rule" in the submitted comment refers to EPA's March 2, 2018 (83 FR 8961) proposed rule, EPA disagrees with the comment because this action is merely approving Rhode Island's pre-existing enhanced motor vehicle I/M regulations into the Rhode Island SIP in accordance with pre-existing federal requirements under the CAA. Rhode Island revised its motor vehicle I/M regulations in 2009 to meet the requirements of the CAA by incorporating testing of vehicles equipped with On-Board Diagnostics (OBD) technology for monitoring the proper function of a vehicle's emissions controls.

### **III. Final Action**

EPA is approving the SIP revisions submitted by the State of Rhode Island on January 28, 2009, and supplemented with a SIP revision on February 17, 2017. These SIP revisions contain the State's revised enhanced motor vehicle I/M program. Specifically, EPA is approving the Rhode Island Department of Environmental Management's Air Pollution Control Regulation No.

34 entitled “Rhode Island Motor Vehicle Inspection/Maintenance Program” (effective January 5, 2009), and the Rhode Island Department of Motor Vehicles’ “Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1” (effective January 28, 2009), and incorporating these rules into the Rhode Island SIP. EPA is approving Rhode Island’s revised I/M program because it is consistent with the CAA and EPA’s I/M regulations and it will strengthen the Rhode Island SIP.

#### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rhode Island’s regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 17, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart OO--Rhode Island**

2. In §52.2070:

- a. The table in paragraph (c) is amended by revising the entries “Air Pollution Control Regulation 34” and “Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1”.
- b. The table in paragraph (e) is amended by adding the entry “I/M SIP Narrative” at the end of the table.

The addition and revisions read as follows:

#### **§52.2070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-Approved Rhode Island Regulations**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
**	*	*	*	**
Air Pollution Control Regulation 34	Rhode Island Motor Vehicle Inspection/Maintenance Program	1/5/2009	[insert date of publication in the Federal Register],  [insert Federal Register citation]	Department of Environmental Management regulation containing I/M standards. Approving all sections except section 34.9.3 “Application” which was excluded from the SIP submittal.
**	*	*	*	**



Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1	Rhode Island Motor Vehicle Inspection/Maintenance Program	1/28/2009	[insert date of publication in the Federal Register],  [insert Federal Register citation]	Division of Motor Vehicles regulation for the light-duty vehicle I/M program. Approving all sections except section 1.12.2 "Penalties" and section 1.13 "Proceedings for Enforcement" which were excluded from the SIP submittal.
**	*	*	*	**

\* \* \* \* \*

(e) \* \* \*

### Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
I/M SIP Narrative	Statewide	Submitted 2/17/2017	[insert date of publication in the Federal Register],  [insert Federal Register citation]	Narrative describing how the Rhode Island I/M program meets the requirements in the federal I/M rule.

[FR Doc. 2018-11201 Filed: 5/24/2018 8:45 am; Publication Date: 5/25/2018]